

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Wright Analyst: Gloria McConnell Bill Number: AB 2004

Related Bills: \_\_\_\_\_ Telephone: 845-4336 Amended Date: 07/02/98

Attorney: Doug Bramhall

Sponsor: \_\_\_\_\_

**SUBJECT:** FTB Collection of Student Aid Commission Outstanding Accounts  
Receivable/Additional Notice to Debtor/Limits FTB Collection Remedies

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

☒ FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED 02/18/98 STILL APPLIES.

☒ OTHER - See comments below.

### SUMMARY OF BILL

Under this bill, before a delinquent student loan could be referred to Franchise Tax Board (FTB) for collection, the Student Aid Commission (commission) would be required to provide certain notices and hearings, including notice at the debtor's last known address, that generally would delay referral of outstanding student loans to FTB by 30 days.

Additionally, under this bill,

- FTB would be required to expressly provide notice to the debtor at the most recent address of record provided by the commission or last known address known to the FTB. If the mail is returned as undeliverable or FTB otherwise knows the mail was misdirected, FTB would be required to use reasonable diligence to ascertain the current address of the debtor and provide notice at that address;
- Collections would have to be returned if the debtor claims not to have received FTB's notice and establishes by a preponderance of the evidence that FTB did not provide the debtor with the notice as required above;
- FTB would be required to wait at least 15 days (instead of the current 10 days) after it issues notice to the debtor containing certain prescribed information written in Spanish and English and requests payment before it can proceed with collection action;
- FTB would be limited to levying on 10% of a debtor's wages;
- FTB would be limited to levying on, in the aggregate, 25% of the amount in a debtor's bank account(s) unless the amount in the bank account(s) is in excess of \$2,000, in the aggregate, at the time of levy; and
- FTB would be required to adopt regulations to implement the provisions of this bill.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input checked="" type="checkbox"/> X N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Department/Legislative Director

Date

Gerald H. Goldberg

7/14/98

#### SUMMARY OF AMENDMENT

For FTB's student loan collection program, the July 2, 1998, amendments would:

- reduce from 60 to 30 days the delay in the commission's referral of cases to FTB for collection;
- require that FTB wait at a minimum 15 days (instead of the current 10 days) after FTB issues notice to the debtor before it can proceed with collection action; and
- make technical changes, including basing the bank levy restriction on amounts in the aggregate to accommodate multiple bank accounts.

For FTB's student loan collection program, the June 18, 1998, amendments would:

- extend to nine months, which returns the bill to current law, the time during which a private collection agency is allowed to work a delinquent student loan before it can be referred to FTB for collection;
- without regard to the cost effective standard required under the Accounts Receivable Management Act, require referral of the delinquent student loan to a private debt collector before referral to FTB, which returns the bill to current law;
- require notice by FTB to the debtor at the most recent address of record expressly as provided by the commission or last address expressly known to the FTB. If the mail is returned as undeliverable or FTB otherwise knows the mail was misdirected, FTB would be required to use reasonable diligence to ascertain the current address of the debtor and provide notice at that address;
- require that FTB wait at least 45 days (instead of the current 10 days) after FTB issues notice to the debtor and sets forth what information must be contained on that notice before it can proceed with collection action;
- require returning to the debtor amounts FTB collects if the debtor claims not to have received FTB's notice and establishes by a preponderance of the evidence that the FTB did not provide the debtor with notice as required;
- limit for collection of delinquent student loans California's administrative wage levy to 10% of the debtor's wages;
- limit for collection of delinquent student loans FTB administrative levy on a debtor's (bank) account to 10% of the account amount, if the amount in the account at the time of levy is \$2,000 or less; and
- clarify the operative date.

#### EFFECTIVE DATE

If the account is in FTB's inventory as of December 31, 1998, the provisions relating to pre-referral activities would not apply. However, to the extent this bill would change notices issued by Franchise Tax Board and the hearing process attributable to activities taken by Franchise Tax Board, the amendments made by this bill would apply to collection activities which are undertaken on or after January 1, 1999. Additionally, this bill would apply to all accounts referred to FTB after January 1, 1999.

#### SPECIFIC FINDINGS

**Currently**, FTB is authorized to administratively garnish wages to collect taxes through an order to withhold (levy). The levy is limited to 25% of the debtor wages. Under AB 255 (Stats. 96, Ch. 1001), FTB was given the authority to collect delinquent student loans as though they were taxes, which generally would

include administratively levying on 25% of the debtor's wages. Federal law also provides for the administrative collection of delinquent student loans. If using the federal provisions, however, the amount of wages subject to levy is 10%. Because FTB counsel is concerned that it is unclear whether FTB's authority to levy on 25% is preempted by the federal provisions, FTB is restricting its levy for delinquent student loans to 10% of wages. FTB has received a preliminary opinion from the federal government that "the federal statute can be read as supplementing the state's levy powers rather than conflicting with or superceding them" and that the federal wage garnishment statute was enacted to permit states without their own administrative wage garnishment provisions to make collections under the federal law. Based on this preliminary opinion, staff understands that Michigan is using its own state administrative levy authority and levying on 25% of the debtor's wages. FTB staff is seeking formal confirmation that levying on 25% of the debtor's wages under California's administrative authority would not violate the federal provision.

Additionally, under the federal administrative levy authority, if it is known that a debtor is involuntarily separated from employment, his or her wages cannot be levied upon until after 12 months of continuous reemployment. FTB currently complies with this federal restriction for delinquent student loan collections. When a levy on wages is issued and FTB is made aware of the employment situation, the levy is released.

**Under this bill**, FTB's levy on wages for collection of delinquent student loans would be limited to 10%.

Additionally, the bill would codify the federal provision that once it is known that a debtor is involuntarily separated from employment he or she must be reemployed continuously for 12 months before an administrative levy to collect a delinquent student loan may be initiated.

**Currently**, under FTB's administrative collection authority, it levies on 100% of the amount in a debtor's bank account, but in the event the debtor can show the levy creates a hardship, FTB releases the levy. In the event of a dispute, the Taxpayer Advocate for laws administered by FTB is available to the debtor.

**Under this bill**, the notices the commission and the FTB are required to send must include information regarding hardship claims. Additionally, in the event the debtor's (bank) account or accounts in the aggregate contain \$2,000 or less, FTB's levy would be limited to 25% in the aggregate of that amount.

**Currently**, once FTB receives an account from the commission, it sends a demand for payment to the address of record or last known address and instructs the debtor that payment must be made within 10 days to prevent collection actions by FTB. Under current practice, to make allowances for the debtor who may make payment on the 10<sup>th</sup> day, FTB actually allows at least 30 days before the next collection action may be taken. If a debtor enters into an installment agreement during that 30-day window, collection action is not taken.

**Under this bill**, once FTB receives the account from the commission, the FTB must send notice of the amount due to the debtor and allow the debtor at least 15 days to make payment to FTB or enter into a reasonable and affordable installment agreement with the commission or FTB. The bill clarifies that the address of record is that provided by the commission and that the last known address is that

known to FTB. If the notice is returned as undeliverable or FTB knows the notice is misdirected, FTB must use reasonable diligence to ascertain the current address and, if the address is ascertained, provide notice to the debtor at that address. If the debtor claims notice was not received and can establish by a preponderance of the evidence that the FTB did not provide the notice as required, all amounts collected by levy must be returned to the debtor.

#### Policy Considerations

- This bill implements due process protections before debts may be referred to FTB that go beyond those already provided under both federal and California laws. Moreover, the bill: (1) potentially limits the amount of wages subject to levy and specifically limits the amount in bank accounts that would be subject to levy and (2) requires that the amounts collected by levy be returned to the debtor if FTB does not provide required notice.

Additionally, setting a limit on the amount subject to collection in an account would increase the work for the depository institutions to comply with FTB's levies for delinquent student loans. Currently, all FTB levies are handled in the same fashion. Only for delinquent student loans withholding orders would depository institutions have to check the balance of each account at the time of levy to determine the amount that may be withheld.

- To the extent the collection of delinquent student loans under this bill differs from the collection of taxes, FTB's collection efficiencies may diminish.

#### Implementation Consideration

These amendments generally resolve the Implementation Considerations raised in the analysis of the bill as amended April 28, 1998. However, staff has recently identified two additional concerns. Without the suggested changes, additional FTB staff may be needed and an unnecessary delay in the collection process could occur:

- The bill requires FTB at the request of the debtor to hold hearings if, among other things, the debtor claims collection would create a hardship or that FTB has not provided notice as required by law. FTB staff anticipated it would administer these hearings informally as is done currently in tax matters and its other collection programs. To clarify that current practice can be used for the hearings required by this bill, these hearings must be exempt from the Administrative Procedures Act, as are protest hearings of proposed tax deficiencies, jeopardy assessments and other hearing given by the FTB pertaining to collection matters. The suggested amendment is attached as Amendment 1.
- This bill requires that the commission, FTB and the Controller each issue regulations to implement the provisions of this bill. To prevent delay of the collection process, staff would have to adopt emergency regulations immediately upon enactment of the bill, followed by permanent regulations.

However, because this bill basically codifies the entire administrative process and provides a high degree of administrative detail, it appears that regulations are unnecessary. FTB staff suggests that current law be continued giving each agency the discretion to adopt necessary regulations. See the attached Amendment 2 for the suggested change.

FTB's SUGGESTED AMENDMENTS  
AB 2004 As Amended July 2, 1998

AMENDMENT 1

On page 10, between lines 9 and 10, insert:

(D) Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to hearings under this paragraph.

AMENDMENT 2

On page 12, line 2, strike out "shall" and insert:

may